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STATE FOR SCA/A (S.INGRAM), S/WCI (S.HODGKINSON), L/PM  
(E.PELOFSKY), WHA/CAN (F.HERNANDEZ), S/CT, AND EUR/RPM  
NSC FOR A.HARRIMAN  
CENTCOM FOR CJTF-82, POLAD, CSTC-A  
DOD FOR OSD (A.RICCI)

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TAGS: [KWAC](#) [MARR](#) [NATO](#) [PTER](#) [PHUM](#) [AF](#)  
SUBJECT: ISAF DETAINEES: CANADIANS CONCLUDE NEW AGREEMENT  
WITH GOA

Classified By: Carol A. Rodley, Counselor for Political-Military Affairs; reasons 1.4(b) and (d).

1. (S/NF) Summary: It is NATO policy that ISAF partner nations should transfer detainees to GoA custody within 96 hours, or release them. While NATO's policy originally did not identify a particular Afghan agency to receive the ISAF detainees, an ISAF HQ order (FRAGO) issued March 30 designated the Afghan National Directorate of Security (NDS) as the receiving agency. The FRAGO, however, recognizes that this may not always be practicable, and commanders retain the discretion to transfer to Afghan National Security Forces (ANSF) instead of the NDS, if the situation dictates. According to ISAF HQ, between October 2006 and May 3, ISAF partner nations transferred 230 detainees to GoA custody. While NATO policy and the ISAF FRAGO provide the general framework for ISAF partner nations in the handling of detainees, a number of ISAF partner nations -- most notably Canada, the UK, the Netherlands, and Australia -- have concluded agreements with the GoA or other partner nations that go beyond the basic ISAF framework. The original detainee transfer agreement that the Canadians signed with the GoA in December 2005 had no provision to ensure that Canada would have continued access to detainees once they had been transferred to GoA custody. Recent reports in the Canadian press of alleged torture of detainees after their transfer from Canadian Forces to GoA custody have put Canadian detainee practices in Afghanistan under intense scrutiny. This scrutiny has been further amplified by an attempt by Amnesty International Canada to seek a court injunction against any further transfers of detainees from Canadian Forces to GoA custody. On May 3, the Canadian government concluded a new, "supplementary" detainee transfer agreement with the GoA that ensures continued access by Canadian officials to detainees transferred by Canadian Forces to the GoA. End Summary.

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ISAF DETAINEE POLICY  
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2. (S/REL ISAF) It is NATO policy that ISAF partner nations

should transfer detainees to GoA custody within 96 hours, or release them. (Note: This policy applies to U.S. Forces, except for a minority operating under a separate OEF mandate.

End Note) While NATO's policy originally did not identify a particular Afghan agency to receive the ISAF detainees, an ISAF HQ order (FRAGO) issued March 30 designated the Afghan National Directorate of Security (NDS) as the receiving agency. The FRAGO, however, recognizes that this may not always be practicable, and commanders retain the discretion to transfer to Afghan National Security Forces (ANSF) instead of the NDS, if the situation dictates. The NDS is the Afghan security service with internal and external responsibilities.

In addition to its intelligence functions, the NDS has its own prosecutors empowered to investigate and prosecute individuals under Afghanistan's "Law on Crimes against Internal and External Security." The NDS runs detention centers around the country.

13. (S/REL ISAF) The ISAF FRAGO directs partner nations ("if time, safety considerations, and circumstances permit") to transfer detainees to NDS custody at the closest of three NDS regional headquarters in Kabul, Kandahar, or Jalalabad. The ISAF FRAGO provides detailed guidance regarding the provision of information and physical evidence associated with each detainee to the NDS, to facilitate NDS processing and prosecution of the transferred individuals. The ISAF FRAGO also designates the ISAF Regional Command (RC) Provost Marshals as the local points-of-contact for detention matters and directs the RCs to establish relationships with local NDS headquarters to facilitate close coordination. ISAF HQ designated the NDS as the GoA receiving agency in large part because the International Committee of the Red Cross (ICRC) previously had indicated to ISAF HQ that the NDS maintained the most orderly Afghan government custodial facilities and

offered relatively good access to the ICRC. ISAF partner nations are supposed to notify the ICRC when they take detainees, including detainees who subsequently are transferred to the GoA.

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ISAF DETAINEE PRACTICES  
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14. (S/NOFORN) ISAF HQ has maintained statistics on detainees taken by ISAF partner nations since October 2006, when ISAF assumed regional responsibility for all of Afghanistan following the Stage IV Transfer of Authority (TOA) over RC-East from CFC-A to ISAF. According to ISAF HQ, between October 2006 and May 3, ISAF partner nations transferred 230 detainees to GoA custody. The following list provides the numbers of detainees transferred to the GoA by various ISAF partners:

US: 87  
Canada: 68  
UK: 41  
Netherlands: 21  
Germany: 7  
Belgium: 3  
Norway: 2  
Italy: 1

15. (S/NOFORN) While NATO policy and the ISAF FRAGO provide the general framework for ISAF partner nations in the handling of detainees, a number of ISAF partner nations -- most notably Canada, the UK, the Netherlands, and Australia -- have concluded agreements with the GoA or other partner nations that go beyond the basic ISAF framework. In fact, of the four ISAF nations with the highest number of ISAF detainees to date, the USG is the only nation that does not have a separate agreement with the GoA that further elaborates humanitarian and/or security assurances for detainees captured and transferred to the GoA under ISAF rules of engagement (ROE). (Comment: Although the GoA's August 2005 Diplomatic Note on detainee transfers does not specifically rule out application to detainees transferred under ISAF ROE, it was developed in the context of preparing

for the prospective transfer of detainees already in U.S. custody at the Bagram Theater Internment Facility and Guantanamo, i.e., detainees not taken under ISAF ROE. End Comment.)

¶16. (S/NOFORN) The original detainee transfer agreement that the Canadians signed with the GoA in December 2005 had no provision to ensure that Canada would have continued access to detainees once they had been transferred to GoA custody. Canadian Embassy contacts (protect) report that they have no firm information regarding the disposition of most of the detainees transferred by Canadian Forces to the GoA. In contrast, the UK concluded a Memorandum of Understanding (MOU) with the GoA in 2005 that explicitly provides for continued access by UK military and diplomatic personnel to the detainees the UK Forces transfer to the GoA, as well as access for representatives of the ICRC and the Afghan Independent Human Rights Commission (AIHRC). The agreement obliges the GoA to maintain accurate records on the disposition of the transferred detainees and to report to the UK when there is a change in the detainee's disposition. It also states that transferred detainees will not be subject to the death penalty. The Dutch concluded a nearly identical MOU with the GoA in 2006. The Australians have an arrangement with the Dutch, whereby detainees taken by Australian Forces are transferred to the Dutch, who then treat them as their own detainees within the framework of the ISAF FRAGO and Dutch MOU with the GoA.

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PRESS REPORTS ALLEGE ABUSE IN GOA CUSTODY  
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¶17. (S/NOFORN) Recent reports in the Canadian press of alleged torture of detainees after their transfer from Canadian Forces to GoA custody have put Canadian detainee practices in Afghanistan under intense scrutiny. This scrutiny has been further amplified by an attempt by Amnesty International Canada to seek a court injunction against any further transfers of detainees from Canadian Forces to GoA custody. Canadian Embassy contacts (protect) have informed us that they believe there is reason to conclude that there is substance to some of the allegations of torture that have been reported in the Canadian press. They have informed us that a Canadian team that recently visited the NDS detention facility in Kandahar heard allegations of torture from two detainees. Those detainees made their claims in front of the local NDS guards, which the Canadians take as an indication of the credibility of the allegations. (Note: One of the detainees claimed that he had been taken to a basement in the guest house of Kandahar Governor Khalid, and that the Governor himself had tortured him with electric shocks. Canadian Embassy contacts -- protect -- tell us they have heard some other similarly ominous reports of such abuses by Governor Khalid. End Note)

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CANADIANS CONCLUDE NEW AGREEMENT  
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¶18. (S/NOFORN) According to Canadian Embassy contacts, when confronted by the press allegations of torture of detainees after their transfer from Canadian Forces to the GoA, the Canadian government initially argued that the ICRC was supposed to monitor and ensure the welfare of the detainees in GoA custody. The ICRC subsequently announced publicly that its long-standing policy is to inform only the detaining authority -- i.e., the GoA -- and that it has no responsibility or authority to inform the governments that transferred the detainees to GoA custody. Canadian Embassy contacts report that the Canadian government's fallback argument was that the AIHRC had agreed to provide monitoring and to ensure the welfare of the transferred detainees. However, even as Canadian government officials were making this argument, the Canadian press was publishing interviews with AIHRC officials who claimed that they lacked the resources to perform such a monitoring role, and that the NDS in any case did not allow them the necessary access. Our

Canadian Embassy contacts tell us it then became clear that they would need another agreement with the GoA, and obtaining such an agreement became their highest priority.

¶9. (S/NOFORN) On May 3, the Canadian government concluded a new, "supplementary" detainee transfer agreement with the GoA. The key elements of the agreement are:

-- Canadian government officials and AIHRC representatives "will have full and unrestricted access to detention facilities where detainees transferred by Canadian Forces are held"; during such access Canadian government officials and AIHRC representatives "will be permitted to interview detainees in private, without Afghan authorities present;"

-- the GoA "will hold detainees transferred by Canadian Forces in a limited number of facilities;"

-- the GoA "will investigate allegations of abuse and mistreatment and prosecute in accordance with national law and internationally applicable legal standards...and will inform the Government of Canada, the AIHRC and the ICRC of the steps it is taking to investigate such allegations and any corrective actions taken;"

-- the GoA and Canadian government "will cooperate closely to maximize capacity building activities directed towards improving the Afghanistan corrections and justice systems."

¶10. (S/NOFORN) Canadian Embassy contacts inform us that Defense Minister Wardak signed the agreement on behalf of the E

GoA. Asked why Wardak signed, rather than the NDS, which will have custody of the detainees according to the ISAF FRAGO, Canadian Embassy contacts note that the original 2005 agreement was with the MOD. They also tell us that it was easiest to bring quick pressure to bear on the MOD (via the Palace). They commented that Wardak was very concerned when he learned that Canadian Forces assessed they would need to halt their combat operations in Afghanistan if the Canadian Federal Court were to uphold the injunction against detainee transfers to the GoA that Amnesty International Canada had filed. Wardak reportedly signed the new agreement with Canada, but, according to Canadian Embassy contacts, appeared quite unhappy in doing so. Following the Canadian government's announcement of the new agreement on May 3, the Canadian Federal Court suspended the hearing regarding the Amnesty International injunction request.

¶11. (S/NOFORN) Canadian Embassy contacts tell us that they still have a number of implementation details to work out under the agreement. Current thinking is that a Canadian diplomat will be assigned to Kandahar and have responsibility, along with assistance from Canadian Forces Provost Marshal personnel, for monitoring the welfare of detainees transferred by Canadian Forces to NDS facilities there. (Note: This arrangement will be similar to current Dutch practice, which, we understand, is to transfer detainees to the NDS detention facility in Kabul where Dutch officials are better able to monitor their well-being. End Note)

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COMMENT  
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¶12. (S/NOFORN) This story is still developing as the UK, Netherlands, and others quietly review their own detainee transfer arrangements with the GoA. While the presumption is that the NDS will prosecute the transferees from ISAF detaining forces, UK Embassy contacts report, for example, that more than 90% of the detainees they have transferred to the NDS subsequently have been released. We have heard informally that some ISAF partners may be revisiting the question of whether ISAF should seek to establish its own detention facility.

¶13. (S/NOFORN) U.S. Forces operating under the ISAF mandate normally conduct missions together with ANA Forces, and it is frequently those ANA forces that take custody of detainees. In those cases where U.S. Forces operating under ISAF alone detain individuals, they turn these over to local NDS officials or to ANA Forces. When the ANA receives detainees from ISAF partners operating under ISAF policy, or the ANA captures detainees itself, it turns over such detainees to the NDS as soon as possible.

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